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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,195	09/24/2003	Priti Srivastava		2658

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EXAMINER

WILLATT, STEPHANIE L

ART UNIT PAPER NUMBER

3754

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,195

Applicant(s)

SRIVASTAVA, PRITI

Examiner

Stephanie L. Willatt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: the specification does not disclose the features of claims 9, 10, and 12. There is no mention of the opening being round or square in the specification or original claims. There is no mention of a portion of the band being reinforced by a plastic portion in the specification or original claims.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 9, 10, and 12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. There is no mention of the opening being round or square in the specification or original claims. There is no mention of a portion of the band being reinforced by a plastic portion in the specification or original claims.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9 and 10 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. How can the opening be an elongate slit, as recited in line 6 of claim 1, and also round, as recited in claim 9, or square, as recited in claim 10? A slit is long and narrow, so it cannot be square or round.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6-8 and 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al. (US 4,547,903) in view of Milani (US 5,875,488).

Brown et al. discloses a visor sweatband attached to a visor that can be used as a multi-use hair accessory. The sweatband comprises a substantially cylindrical band (sweat band 11) formed of an elastomeric material, as discussed in column 2, lines 22-27. The band (11) has a continuous and unbroken circumference and a substantially continuous height, as shown in Figures 1 and 2. The band (11) is continuously

stretchable in at least the circumferential direction along the entire circumference thereof. The sweatband is capable of being worn as an ear warmer, scarf or muffler. The elastomeric material is a material capable of providing warmth. At least a portion of the band is reinforced by a plastic portion (visor portion 16), which is rigid, plastic and a decorative accent, as discussed in column 2, lines 35-48 and column 2, line 67 to column 3, line 2.

Brown et al. does not disclose an opening formed in the cylindrical band. Milani discloses a cylindrical band (fabric band and ponytail pull-through means 30) attached to a visor that includes a substantially elongated opening of a dimension allowing the wearer's ponytail to be pulled through the opening, as discussed in column 2, lines 47-56. The elongated opening is an elongate slit (fabric band and ponytail pull-through means 30) disposed along at least a portion of the circumference of the band and sized to enable a wearer's ponytail to be pulled through and held securely, as shown in Figure 3. The length of the slit (fabric band and ponytail pull-through means 30) is not greater than a distance between the ears of a wearer, as measured across the back of the wearer's head. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the sweatband of Brown et al. with a slit, as taught by Milani, in order for the wearer to be able to put her ponytail through the sweatband.

In ordinary use, the sweatband of Brown et al., as modified by Milani, would be worn in the same way that the visor of Milani is worn. When putting the band of Milani on during ordinary use, the user's ponytail is pulled through the slit and the visor is

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pushed over the user's head and then pulled back up to the position shown in Figure 2. Pushing the band over the user's head is necessary to make sure that the user's hair is not in his/her face. If the user's hair is long, it may be necessary to push the sweatband over the user's face, around the user's neck, in order to ensure that the user's hair will be held back by the band when it is placed in the position shown in Figure 2. The steps of pushing the band over the user's head and pulling the band back up to the position shown in Figure 2 are well known. These steps are the steps most people perform when putting on a visor or headband or sweatband.

Response to Arguments


8. Applicant's arguments with respect to claims 6-16 have been considered but are moot in view of the new ground(s) of rejection.


Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephanie L. Willatt whose telephone number is (571) 272-4721. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


slw


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